

Bentley B. Rayburn

FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL COUNSEL 17 April 2009

2009 APR 20 P 12:40

Loren E. Shannon

**Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463**

Reference: MUR 6176

Dear Federal Election Commission,

On 6 March 2009, my campaign treasurer, Mr. Loren Shannon, and I received notification of a complaint dated 3 Mar 09 and assigned MUR number 6176, that we might have violated the Federal Election Campaign Act of 1971. We requested an extension to the date for our response and were granted an extension to 20 April 2009. The complaint, filed by Mr. Matthew J. Werner, accused my campaign organization and me of failing to disclose benefits received in the form of a poll conducted by the Housing and Building Association of Colorado Springs Political Action Committee (HBA-PAC). Here are the facts.

The Republican primary election for the 5th Congressional District in August of 2008 had developed into a three-way race between myself, Mr. Jeff Crank, and the incumbent, Mr. Doug Lamborn. The HBA-PAC expressed concern over a three-way race and desired to see if there was an equitable way for Mr. Crank and me to determine who was the stronger candidate to run against Mr. Lamborn. The weaker candidate would agree to drop out of the race. After a great deal of negotiation between the two campaign organizations and the HBA-PAC, a deal was struck. The HBA-PAC would conduct and pay for a poll which would take place over a three day period (27-29 May 08) and would poll 400 potential voters to determine which candidate would drop out and which would go on to run against Mr. Lamborn. The 27-29 May dates are important as the 5th Congressional District Assembly was schedule to convene on Friday, the 30th of May 2008. As Mr. Crank was the only candidate going through the Assembly (Lamborn and myself were petitioning on to the ballot), it was assumed that Mr. Crank would garner a considerable amount of positive publicity from the Assembly.

No polling was conducted on the 27th of May, but the polling company assured the interested parties that the required 400 voters could be polled on 28 and 29 May 08. On Friday, May 30, following the District Assembly, though we were expecting to receive the results of the poll, the Rayburn campaign was notified that only 106 calls were made by the deadline of the agreement vice the agreed upon number of 400. Because of the on-going District Assembly activities and media interest and the upcoming State Assembly the next day, both campaigns agreed to suspend the polling and re-evaluate the situation the following week. On Saturday, the Rayburn campaign was contacted by a voter who had received a polling call earlier that day, in violation of the agreement not to poll over the weekend. When the company conducting the telephonic polling was questioned about the apparent polling calls, the Rayburn campaign was repeatedly assured that no calls had been made over the weekend. Discussions then continued on Tuesday and Wednesday about the resumption of polling, with reassurances that, again, no polling had been conducted over the weekend. On Wednesday afternoon, the decision was made to resume polling

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on Wednesday night. Later that evening, and after the Rayburn campaign had agreed to a resumption of the polling, a HBA-PAC representative notified the campaign that—contrary to what they had been told—polling had indeed been conducted over the prior weekend in clear violation of the earlier agreement not to do so. The Rayburn campaign raised our serious concerns about the conduct of the poll to this point with the HBA-PAC. On Thursday morning, the HBA-PAC again notified the Rayburn campaign that “someone” had told the polling company to poll up to 600 voters, vice the agreed on 400 number. When asked for an explanation, the Rayburn campaign was told that David Hill Research (a polling company employed by the Crank Campaign) had unilaterally authorized extra calls to be placed without proper authorization. At that point—and before any results were compiled or released—the Rayburn campaign notified the HBA-PAC that we had completely lost confidence in the administration of the poll and considered the original agreement to be voided. The HBA-PAC agreed.

The following Tuesday, the HBA-PAC conducted a Political Action Committee board meeting where the poll was discussed. At that time, the HBA-PAC notified both campaigns that it considered the poll to be HBA-PAC property and that the results were not to be released by either campaign. On June 24, the HBA-PAC released a press release that said in part, “Unfortunately, the implementation and the process for this effort were flawed, so we agreed that the results of our efforts and the problems in its implementation invalidated any agreement that had previously been in place.”

In rejecting the poll and the polling data before the results were known by any of the parties, the Rayburn Campaign did not use any of the unreliable polling data to determine whether to stay in or get out of the race. The Rayburn campaign never took possession of the poll nor did we receive any of the data from the poll. By rejecting the poll and its results, we garnered no value (positive or negative) from the poll.

I appreciate the opportunity to answer the accusations filed against our campaign and look forward to answering any further questions you might have. I can be reached at _____ or _____
Mr. Shannon can be reached at _____ or _____

Very sincerely,


BENTLEY B. RAYBURN
Major General, USAF (Retired)

1st Endorsement:



LOREN E. SHANNON

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